Office-Supreme Court, U.S
FILED
DEC 21 1963
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT

OF THE

UNITED STATES

No. 693

E. S. HEWARD,

Petitioner,

vs.

FREDERICK CROMWELL,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT
OF THE UNITED STATES

E. S. HEWARD
In Persona Propria
210 W. Arroyo
Reno, Nevada

TO THE:
HONORABLE CHIEF JUSTICE AND

ASSOCIATE JUSTICES OF THE

SUPREME COURT OF THE UNITED STATES

Petitioner prays a writ of certiorari issue to review the decree of the First Appellate Court Division 2 of California, with denial of hearing by the Supreme Court at San Francisco.

BASIS OF JURISDICTION

Jurisdiction is involved under Section 1257 (3) of the Title 28 of the United States Code.

I. Notice is hereby given that Petitioner above named, hereby appeals to the Supreme Court of the United States for a writ of certiorari from the final judgment of the order Denying Hearing concerning Judgment by District Court of Appeal 1st District Division 2, Civ. No. 20758, San Francisco, July 26, 1963.

(a) The opinion of the Court below entered upon May 27, 1963, and hearing denied.

(b) 1. The date of the order confirming dismissal was May 27, 1963, and the dismissal by the Superior Court was May 10, 1962,

2. The date of the order granting an extension of time to file a petition for certiorari is December 23, 1963.

3. The statutory provision believed to confer on this court jurisdiction to review the appellate court's refusal to set aside the dismissal of the lower court is the 14th amendment of the U. S. Constitution, which deprives plaintiff his day in court. His property without due process of law.

(c) The questions presented for review expressed in the terms and circumstances of the case are:

1. Heward the plaintiff secured a default judgment against Cromwell in 1954 for some $9,000.00. Subsequently, defendant filed an action in equity No. 65319 and the court in 1957, Contra Costa County near San Francisco,

set aside the judgment after a trial on the merits, but granted plaintiff a new trial without further service. Quaere, should not plaintiff have been given three (3) years to bring case to trial? California C. P. 583.

2. An appeal from this latter part of this order was taken by Cromwell the Defendant to appellate court, San Francisco Case No. 18084. On March 25, 1959, they affirmed the lower court's decision, holding that Cromwell in seeking the aid of equity to afford a trial on the merits waived his right to assert the bar of statute of limitation in the original action No. 53573, thus establishing the Law of the Case. Quaere, does this not further indicate Heward should have been given three (3) years to bring case to trial? C. C. P. 583.

3. In May 1962 Defendant brought a dismissal action and the Superior Judge granted same, on the basis of the five (5) year clause in California C. P. 583. Quaere, was this order not plainly wrong?

4. At the dismissal trial, attorneys for both sides failed to include the finding of the Appellate Court which stated "We have no hesitency in holding that Cromwell in seeking the aid of equity waived his right to the bar of statute of limitation 581a and 583." Quaere, was this not insufficiency of evidence, and ground for a new trial itself?

5. The plaintiff appealed to the Appellate Court to reinstate the case, so that it could be heard on its merits, but they affirmed the dismissal. The point raised by the Court in affirming

the action was that the three (3) year statute applies only to where a reversal on appeal was remanded for trial. Quaere, was this not plainly wrong as the California Legislature amended Statute 583 by Stats. 1931 P. 373. It states, "or when an appeal has been taken from an order granting a new trial and such order is affirmed on appeal, action must be dismissed by the trial court unless brought to trial within three (3) years from the date upon which remittitur is filed by the clerk?" Plaintiff still had five (5) months to go.

6. The Appellate Court decision of May 27, 1963, states "Appellant overlooks the fact that the appeal from the decree setting aside the default judgment was an appeal taken in a separate and independent proceeding and not an appeal from a prior judgment entered in the case now before this court." Quaere, should not the principle of the law of the case, established as a result of the appeal to the Appellate Court from an order setting aside the default judgment, but granting a new trial, have a distinct bearing on the second appeal to the Appellate Court?

REASONS FOR GRANTING THE PETITION

This unique case presents a question of great public importance. Can a Supreme Court of any state disregard the amendments to a statute that has been the law for some thirty (30) years, and set up their own? To clarify this statute would be of utmost importance. For an Appellate Court to leave out the last sentence of a statute denies

justice to those who depend on such full wording of that law.

E. S. Heward
In Persona Propria